

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Donovan	Team: Team # 6	CCRB Case #: 200814346	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/02/2008 4:00 PM	Location of Incident: 7th Avenue and 9th Street Station	Precinct: 78	18 Mo. SOL 4/2/2010	EO SOL 4/2/2010	
Date/Time CV Reported Fri, 10/03/2008 11:44 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/03/2008 11:44 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Marksberry	28033	927605	TB DT30

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Smith	30374	937555	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Marksberry	Force: PO Thomas Marksberry used physical force against § 87(2)(b)	
B.POM Thomas Marksberry	Force: PO Thomas Marksberry used physical force against § 87(2)(b)	
C.POM Thomas Marksberry	Abuse: PO Thomas Marksberry threatened § 87(2)(b) with the use of force.	

Synopsis

On October 3, 2008, § 87(2)(b) filed a complaint with the CCRB on behalf of § 87(2)(b) via the telephone. He stated that he did not witness the incident. § 87(2)(b) was in the F train subway station located at 7th Avenue and 9th Street in Brooklyn and PO Thomas Marksberry, of the Transit District 30, approached her and told her to leave the subway station. § 87(2)(b) alleged that PO Marksberry picked her up off of the train and carried her onto the platform. She also alleged that he pushed her while she was leaving the train station (Allegation A). § 87(2)(b) alleged that he grabbed her friend, § 87(2)(b) by her book bag and pulled her off of the train (Allegation B). PO Marksberry also allegedly threatened to “beat up” § 87(2)(b) s sister, § 87(2)(b) (Allegation C).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On October 3, 2008, § 87(2)(b) filed a complaint with the CCRB on behalf of his friend, § 87(2)(b) via the telephone (enc.4a-d). § 87(2)(b) did not witness the incident.

§ 87(2)(b)

On October 15, 2008, § 87(2)(b) (female, Hispanic, 5’2”, 116lbs, § 87(2)(b) old, light brown hair and green eyes) was interviewed at the CCRB (enc.5a-d). On October 2, 2008 at approximately 4:00pm in the vicinity of 7th Avenue and 9th Street inside of the F subway station in Brooklyn, § 87(2)(b) and her friends were swiping their Metro Cards to go through the turnstiles. § 87(2)(b) was with her friends § 87(2)(b)

§ 87(2)(b) did not know § 87(2)(b) and § 87(2)(b) last names. § 87(2)(b) and § 87(2)(b) took one Metro Card and went inside the turnstile together. PO John Smith saw them and asked them to approach him so he could take their information. § 87(2)(b) knew PO Smith’s name because she sees him everyday at the train station and he wears a uniform with a badge. § 87(2)(b) and § 87(2)(b) spoke with PO Smith and he wrote them summonses. § 87(2)(b) and her other friends waited for § 87(2)(b) and § 87(2)(b) in the staircase of the train station. § 87(2)(b) and her friends had already swiped through the turnstiles and were on the stairs toward the train. Another police officer, PO Marksberry, who § 87(2)(b) knew because she saw his name on his badge, approached the girls on the stairs and told them to go downstairs because they could not wait for their friends on the stairs. § 87(2)(b) spoke to her friends in Spanish and told them that she did not like PO Marksberry. PO Marksberry told them that he knew Spanish and understood what they were saying.

§ 87(2)(b) and the girls continued downstairs and PO Marksberry approached § 87(2)(b) and told her to come talk with him. PO Marksberry told § 87(2)(b) to leave the train station and she asked why she had to leave. § 87(2)(b) was hugging her friend § 87(2)(b) and PO Marksberry told § 87(2)(b) to come with him and grabbed her arm. PO Marksberry grabbed § 87(2)(b) right arm and pulled it by grabbing her wrist and pulled her to go with him. § 87(2)(b) pulled her arm back because she did not want to go with PO Marksberry. PO Marksberry and § 87(2)(b) were by the platform where the train comes. § 87(2)(b) was waiting for the Manhattan bound train. § 87(2)(b) asked PO Marksberry again why she had to leave and he stated that if she went with him and talked to him then she did not have to leave the train station. § 87(2)(b) went to speak with PO Marksberry and he told her what she did was disrespectful. § 87(2)(b) told him that she did not disrespect him because she was talking to her friends and she just told her friends that she did not like him. PO Marksberry then told § 87(2)(b) that he did not care what she said and she had to leave the train station. § 87(2)(b) told him that she was not leaving the train station because she used her money for the fare and did not have another way to get home. PO Marksberry told § 87(2)(b) that he did not care about the consequences if she left the train station. § 87(2)(b) explained that she was not going to leave the train station.

One of § 87(2)(b) friends said to § 87(2)(b) in Spanish, “Lets go” and PO Marksberry told her that he knew what she was saying in Spanish. § 87(2)(b) grabbed § 87(2)(b) hand and told her to come with her. The F train arrived on the platform and § 87(2)(b) and her friend, § 87(2)(b) went inside of the train. § 87(2)(b) and § 87(2)(b) were waiting on the platform

and did not get on the train. PO Marksberry pulled § 87(2)(b) off the train by her book bag and put her on the platform. PO Marksberry then grabbed § 87(2)(b) by her breasts from behind. The allegation was referred to IAB under log# 08-47842. His hands were covering her breasts and pulled her toward him. PO Marksberry is tall and he picked § 87(2)(b) up from the ground and her feet were not touching the ground. PO Marksberry pulled § 87(2)(b) tight to his body and she cried and screamed for him to let her go. PO Marksberry walked to the other side of the platform with § 87(2)(b) in his arms and his hands were on her breasts. § 87(2)(b) cried and screamed at PO Marksberry not to touch her. § 87(2)(b) also moved her body around trying to kick to get down. PO Marksberry carried § 87(2)(b) for about six or seven feet until he let her go. PO Marksberry eventually dropped § 87(2)(b) once he brought her to the staircase and told one of her friends not to pull her. PO Smith came to the scene and saw PO Marksberry have her in his arms and place her down on the ground. PO Marksberry told her friend, § 87(2)(b) if she pulled § 87(2)(b) again he would “beat her up” and make her kiss the floor. § 87(2)(b) grabbed § 87(2)(b) and they told PO Marksberry that they were leaving the train station. § 87(2)(b) and § 87(2)(b) went up the stairs and PO Marksberry pushed § 87(2)(b) in her back. § 87(2)(b) walked up the stairs and PO Marksberry pushed her from behind so she almost fell up the stairs. § 87(2)(b) then left the train station. There were no summonses issued.

Results of Investigation

Attempts to contact additional victims

The investigator called the § 87(2)(b)'s residence six times between the dates of October 30, 2008 and March 10, 2009. On January 29, 2009, the investigator spoke to § 87(2)(b) and she scheduled an appointment for her and her sister § 87(2)(b) for February 6, 2009, which they missed without contacting the investigator. Letters were sent to § 87(2)(b) and § 87(2)(b) on February 6, 2009 and March 10, 2009, which were not returned to the agency. To date, § 87(2)(b) and § 87(2)(b) have not contacted the investigator.

Identification of Officers Interviewed

§ 87(2)(b) read PO Smith and PO Marksberry's names on their badges. Their memo books indicated that they were involved in the incident, § 87(2)(g)

Officer Statement: Officer Thomas Marksberry

On June 4, 2009, Officer Thomas Marksberry (male, white, 5'10", 200lbs, brown hair and brown eyes) was interviewed at the CCRB (enc.9a-b). On October 2, 2008, PO Marksberry worked from 8:30am to 5:05pm and worked at the 7th Avenue subway station as School Conditions. He worked with PO Smith and was dressed in uniform. He was not assigned to a motor vehicle. In his memo book, there was an entry on PO Marksberry's fly sheet, which stated at 3:58pm, female Hispanic refused lawful order to get off stairs leading to the platform/mezzanine area as they blocked passengers from safely walking down stairs and walking upstairs. PO instructed the females that standing on stairs is a hazard to themselves and others. It is a safety issue. PO directed them to the mezzanine or platform area. Females refused lawful order by PO numerous times while continuing to berate PO. Females continued on platform to berate PO. At which point, PO asked the females to leave. PO told females to leave. Females tried to get on train PO grabbed female's arm and told her to get out.

On October, 2, 2008, at approximately 4:00pm, PO Marksberry came down the stairs of the 7th Avenue and 9th Street subway station in Brooklyn and saw six females standing on the stairs leading to the northbound platform of the F train. The females were already past the part of the turnstiles. There is a mezzanine area over there and there were passengers coming from the F train exiting the station by walking up the stairs. PO Marksberry asked the females to please get off the stairs. There was no response from the individuals the first time he approached. PO Marksberry asked them to move again and there was no response. PO Marksberry asked them a third time to move and the females cursed at him. They stated that they were not moving off the stairs and asked why they had to move. PO Marksberry explained that people need to walk up and down the stairs. He explained that it was a safety issue and they needed to leave. The females continued to berate PO Marksberry. PO Marksberry later stated that it was only § 87(2)(b) who berated and cursed at him. PO Marksberry raised his voice and told them to get off the stairs. The females went downstairs and one of the individuals, identified by the CCRB as § 87(2)(b) gave PO Marksberry the finger and told him to “fuck off.” While she was going down the stairs, § 87(2)(b) said,

“Why do I have to leave? Fuck this.” They were speaking in English. PO Marksberry did not indicate that the females were speaking Spanish.

PO Marksberry went downstairs and told § 87(2)(b) that she needed to leave the train station. A train pulled into the station and § 87(2)(b) attempted to get on the train. PO Marksberry grabbed her arm and pulled her off the train. PO Marksberry grabbed her on the back bicep of her left arm. PO Marksberry did not pick § 87(2)(b) up off the ground at any point. § 87(2)(b) pulled away from PO Marksberry. PO Marksberry stood about 3 or 4 feet from the train on the platform. The females were a few feet away to PO Marksberry’s left side, but he did not recall if they stood on the platform or on the train. PO Marksberry did not grab any of the females by a book bag. PO Marksberry explained to § 87(2)(b) that she had to leave the train station. § 87(2)(b) went and grabbed the stairway railing and PO Marksberry removed her hands. PO Marksberry escorted by her arm her up the stairs to exit the station. § 87(2)(b) was cooperating walking up the stairs. The other females walked up the stairs in front of PO Marksberry and left the train station with § 87(2)(b). § 87(2)(b) did not cry or scream during the incident. PO Marksberry never threatened to “beat up” any of the females. PO Marksberry did not push § 87(2)(b). PO Marksberry indicated that he should have placed § 87(2)(b) under arrest and should have filled out an ejection report. PO Marksberry instead had her leave the train station. PO Marksberry used his discretion not to write § 87(2)(b) a summons.

Officer Statement: Officer John Smith

On April 14, 2009, Officer John Smith (male, white, 6’5”, 280lbs, red hair, brown eyes) was interviewed at the CCRB (enc.7a-b). On October 2, 2008, PO Smith worked from 8:30am to 5:05pm and was assigned to School Conditions. He worked with PO Marksberry and was dressed in uniform. They worked on foot. In his memo book, PO Smith stated at 3:58pm Assisted PO Marksberry with ejection.

On October 2, 2008 at approximately 4:00pm, PO Smith was writing two juvenile reports upstairs in the mezzanine area at the 7th Avenue and 9th Street F train station in Brooklyn (the juvenile reports were for a separate incident). PO Smith did not stop any individuals for entering the turnstile without a Metro Card. PO Smith heard screaming including cursing and yelling coming from the platform. The individuals yelled, “We’re not leaving. You’re not going to kick us out.” PO Smith went downstairs to the platform on the northbound side and saw PO Marksberry walking about five feet behind a group of about seven to ten people. There was a mix of girls and boys in the group. There was no F train in the station at the time. PO Smith did not hear or see an F train during the interaction. PO Smith did not see PO Marksberry pull any individual by their book bag. PO Marksberry did not grab § 87(2)(b) and pick her up from the ground. PO Marksberry was attempting to eject § 87(2)(b) from the train station. § 87(2)(b) was on the stairs and grabbed the hand rail. PO Marksberry told § 87(2)(b) to let go of the handrail and she refused. PO Marksberry lifted § 87(2)(b) hands off of the handrail and escorted her up the stairs. PO Marksberry grabbed § 87(2)(b) arm to take it off the handrail. PO Marksberry did not use much force to lift her arm. PO Marksberry escorted her by placing one hand on her back and the other hand on her back. § 87(2)(b) did not want to leave and gave some resistance as she walked up the stairs. § 87(2)(b) was angry and cursing. Eventually she was cooperative and walked up the stairs. § 87(2)(b) was the only individual being ejected from the train station. Her friends cursed and yelled at the officers. PO Smith did not recall the context of the yelling. PO Marksberry did not threaten any of the individuals with force. PO Marksberry did not see PO Marksberry push § 87(2)(b). Once they went through the turnstile all of the individuals left the train station. § 87(2)(b) left the train station.

Police Department Documents

The roll call listed PO Marksberry and PO Smith working for school outreach on the date of the incident (enc.10a-q). There were no summonses or stop and frisk reports regarding the incident.

CCRB Histories

PO Marksberry has not had any substantiated allegations with the CCRB in his 8 years of service to the NYPD (enc.2a).

Neither § 87(2)(b) nor § 87(2)(b) has previously filed a complaint with the CCRB (enc.3a-b).

Civilian Criminal History

Since § 87(2)(b) is a juvenile, there is no way to obtain her criminal history.

Conclusions and Recommendations

Officer Identification

PO Marksberry was identified by name and he matched the description provided by § 87(2)(b)

§ 87(2)(g)

Undisputed Facts

It is undisputed that PO Marksberry approached § 87(2)(b) and told her friends to move off of the stairs. There is no dispute that PO Marksberry physically removed § 87(2)(b) from the train and ejected her from the subway station.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) indicated that she was waiting on the stairs for her friends at the train station. She stated that PO Marksberry asked her to move off of the stairs and she complied with his orders. PO Marksberry stated that § 87(2)(b) was acting disorderly and did not comply with his orders until he asked her several times before she moved off the stairs. PO Marksberry also indicated that § 87(2)(b) used profanity with him. § 87(2)(g)

§ 87(2)(b) alleged that PO Marksberry grabbed her and picked her up off the train. She also alleged that PO Marksberry pushed her while she was leaving the train station. PO Marksberry admitted that he grabbed § 87(2)(b)'s arm to pull her off of the train, but denied using any other physical force against her. PO Smith did not recall PO Marksberry picking up § 87(2)(b) from the ground. § 87(2)(g)

PO Marksberry indicated that § 87(2)(b) cursed and yelled at him.

§ 87(2)(g)

§ 87(2)(b) alleged that PO Marksberry also grabbed § 87(2)(b) by her book bag in order to take her off of the train. She also alleged that PO Marksberry threatened to "beat up" § 87(2)(b). PO Marksberry denied the allegations. § 87(2)(g)

Allegation A) PO Thomas Marksberry used physical force against § 87(2)(b)

According to Patrol Guide Procedure 203-11, officers are responsible for the proper use of force under appropriate circumstances (enc.1a-b). § 87(2)(g)

Allegation B) PO Thomas Marksberry used physical force against § 87(2)(b)

Allegation C) PO Thomas Marksberry threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: